IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1922 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question : NO
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of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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ORAL JUDGEMENT

(per A.R. Dave, J.)

Rule. Service of rule is waived by learned advocate Mr. M.R. Bhatt for the respondents. At the request of the learned advocates, the petition is finally heard today.

2. The petitioners challenge the action of the respondents in seizing cash of Rs. 99 lacs and seek a direction requiring the respondents to release the amount of Rs. 77.54 lacs now held by them.

3. It is the case of the petitioners that the said cash could not have been seized as the same did not constitute an undisclosed income as is duly reflected in the books of accounts. According to the respondents, the said cash is not reflected in the books of accounts regularly kept and, therefore, falls under the definition of "undisclosed income."

4. We have heard Mr. S.N. Soparkar, learned advocate appearing for the petitioners and Mr. B.B. Naik, learned advocate for the respondents. It is not in dispute that on the amount of seized cash the petitioners are liable to pay tax. According to the petitioners, as the said cash was duly reflected in the books of accounts, the same would be subject to income tax as per normal rate. According to the respondents, the said cash is undisclosed income and is liable to tax under Chapter XIV-B of the Income-tax Act. Therefore, the taxability of this income is not in controversy; the controversy is the rate at which the same is to be taxed.

5. Having heard the parties, we are of the view that ends of justice would be met if the following directions are issued:-

I. The respondents would forthwith appropriate cash seized by them against the tax liability, if any, of the petitioners that may arise under assessments framed under Chapter XIV-B of the Income-tax Act.

II. If it is held that the said income is not taxable under the said Chapter and is to be taxed as normal income, credit for the taxes so appropriated would be given in the said assessment from the date on which appropriation

is made.

III. In the returns of income filed by the petitioners under sec. 139 of the Income-tax Act, they have already disclosed the said amount as their income. They are, therefore, required to pay tax on this income as the said income is already disclosed. According to the revenue, the said income is to be taxed under Chapter XIV B of the Act at a higher rate and as we are permitting the revenue to appropriate the cash against the tax liability under Chapter XIV B, no action would be taken by the revenue against the petitioners for nonpayment of taxes relatable to the disputed income in the returns filed by them under sec. 139 of the Act.

IV. After conclusion of the assessment proceedings (including proceedings also under Chapter XIV B), if the petitioners are found to be eligible for refund, the revenue shall issue necessary refund in accordance with law with interest at the rate of 15% p.a. as stated in para 12 of the affidavit-in-reply filed on behalf of the revenue.

6. Subject to these directions, the petition is disposed of. It is, however, clarified that these directions are being issued without prejudice to the rights and contentions of the parties and without expressing any opinion on the rival contentions. Liberty to apply in case of difficulty.

7. Rule is made absolute to the above extent with no order as to costs.

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